UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

KRISTIN REGAN, on behalf of herself and all others similarly situated,

Plaintiffs,

-against-

CAPITAL MANAGEMENT SERVICES, LP

Defendant.

CIVIL ACTION

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff KRISTIN REGAN (hereinafter, "Plaintiff"), a New York resident, brings this class action complaint by and through her attorneys, Cohen & Mizrahi LLP, against Defendant CAPITAL MANAGEMENT SERVICES, LP (hereinafter "Defendant"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

- 1. Congress enacted the FDCPA in 1977 in response to the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a). At that time, Congress was concerned that "abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy." *Id.* Congress concluded that "existing laws . . . [we]re inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. §§ 1692(b) & (c).
- 2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to "insure that those debt collectors who refrain from using

abusive debt collection practices are not competitively disadvantaged." *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

- 3. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
- 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

NATURE OF THE ACTION

- 5. Plaintiff brings this class action on behalf of a class of New York consumers seeking redress for Defendant's actions of using an unfair and unconscionable means to collect a debt.
- 6. Defendant's actions violated § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.
- 7. Plaintiff is seeking damages, and declaratory and injunctive relief.

PARTIES

- 8. Plaintiff is a natural person and a resident of the State of New York, and is a "Consumer" as defined by 15 U.S.C. §1692(a)(3).
- 9. Defendant is a collection agency with its principal office maintained in Buffalo, New York.
- 10. Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.
- 11. Defendant is a "debt collector," as defined under the FDCPA under 15 U.S.C. § 1692a(6).

CLASS ALLEGATIONS

- 12. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter "FRCP")
 Rule 23, individually and on behalf of the following consumer class (the "Class"):
 - Plaintiff brings this action individually and as a class action on behalf of all
 persons similarly situated in the State of New York from whom Defendant
 attempted to collect a consumer debt using the same unlawful form letter herein,
 from one year before the date of this Complaint to the present.
 - The Class period begins one year to the filing of this Action.
- 13. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:
 - Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons (*See* Exhibit A, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);
 - There are questions of law and fact which are common to the Class and which
 predominate over questions affecting any individual Class member. These
 common questions of law and fact include, without limitation:
 - a. Whether Defendant violated various provisions of the FDCPA;
 - Whether Plaintiff and the Class have been injured by Defendant's conduct;
 - c. Whether Plaintiff and the Class have sustained damages and are

entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

- d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.
- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed to proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.

Defendant has acted on grounds generally applicable to the entire Class, thereby
making appropriate final injunctive relief or corresponding declaratory relief
with respect to the Class as a whole.

ALLEGATIONS PARTICULAR TO KRISTIN REGAN

- 14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "13" herein with the same force and effect as if the same were set forth at length herein.
- 15. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and Internet.
- 16. Upon information and belief, within the last year Defendant commenced efforts to collect an alleged consumer "debt" as defined by 15 U.S.C. 1692a(5), when it mailed a Collection Letter to Plaintiff seeking to collect on an unpaid account allegedly owed to Discover Bank.
- 17. On or around September 06, 2017, Defendant sent Plaintiff a collection letter (hereinafter, the "Letter"). *See* Exhibit A.
- 18. The Letter was sent or caused to be sent by persons employed by Defendant as a "debt collector" as defined by 15 U.S.C. §1692a(6).
- 19. The Letter is a "communication" as defined by 15 U.S.C. §1692a(2).
- 20. The Letter was an initial communication between Plaintiff and Defendant.
- 21. The Letter states in pertinent part: "Current Amount Due: \$1,884.97."
- 22. As a result of the following Counts Defendant violated the FDCPA.

First Count 15 U.S.C. §1692e et seq. False or Misleading Representations as to Status of Debt

23. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "22" herein with the same force and effect as if the same were set forth at length herein.

- 24. Defendant's debt collection efforts attempted and/or directed towards Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.
- 25. Pursuant to 15 U.S.C. §1692e, a debt collector is prohibited from using false, deceptive, or misleading representation in connection with the collection of a debt.
- 26. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on non-enumerated practice.
- 27. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.
- 28. The question of whether a collection letter is deceptive is determined from the perspective of the "least sophisticated consumer."
- 29. Defendant's conduct constitutes a false, deceptive and misleading means and representation in connection with the collection of the debt, in violation of 15 U.S.C. § 1692e.
- 30. The Letter can reasonably be read by the least sophisticated consumer to have two or more meanings concerning the actual balance due, one of which must be inaccurate, in violation of 15 U.S.C. § 1692e.
- 31. By stating a "Current Amount Due" without further clarification, "Defendant did not meet the minimum standard set out by *Avila*, because the letter does not state when, if ever, the amount owed by the Plaintiff would increase."
- 32. By stating a "Current Amount Due," Defendant falsely suggested that immediate payment of the balance would benefit Plaintiff by implying that the Balance would be subject to change,

¹ Thomas v. Midland Credit Management, Inc., 217CV00523ADSARL, 2017 WL 5714722, at *4 (E.D.N.Y. Nov. 27, 2017), stating that "[h]ere, the Defendant argues that Avila is inapplicable because the letter is clear that interest is not accruing. The Court disagrees...while the letter states that interest and fees are zero at the time the letter was sent, it does not state whether interest would accrue at a later date. This is further clouded by the fact that the letter classifies the amount owed as the "current balance," implying that interest may accrue.

and could be subject to additional interest.

33. Defendant's debt collection efforts attempted and/or directed towards Plaintiff violated various

provisions of the FDCPA, including but not limited to § 1692(e).

34. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct

violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and

attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Declaring that this action is properly maintainable as a Class Action and

certifying Plaintiff as Class representative and Cohen & Mizrahi LLP, as

Class Counsel;

(b) Awarding Plaintiff and the Class statutory damages;

(c) Awarding Plaintiff and the Class actual damages;

(d) Awarding Plaintiff costs of this Action, including reasonable attorneys'

fees and expenses;

(e) Awarding pre-judgment interest and post-judgment interest; and

(f) Awarding Plaintiff and the Class such other and further relief as this Court

may deem just and proper.

Respectfully submitted,

By: /s/ Daniel C. Cohen

Daniel C. Cohen, Esq.

Cohen & Mizrahi LLP

300 Cadman Plaza West. 12th Floor

Brooklyn, New York 11201

Phone: (929) 575-4175

Fax: (929) 575-4195

Email: dan@cml.legal

Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

/s/ Daniel C. Cohen
Daniel C. Cohen, Esq.

Dated: Brooklyn, New York

March 07, 2018

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

	Eastern Dist	TICL OF NEW TOLK		
KRISTIN REGAN, on behalf and all others similarly situated,)))		
Plaintiff(s))		
v.		Civil Action No.		
CAPITAL MANAGEMENT SERVICES	S, LP)))		
Defendant(s))		
SUMMONS IN A CIVIL ACTION				
To: (Defendant's name and address)	CAPITAL MANAGEM 698 1/2 SOUTH OGE BUFFALO, NEW YOR	DEN STREET		
A lawsuit has been filed ag	ainst you.			
are the United States or a United St P. 12 (a)(2) or (3) — you must serv the Federal Rules of Civil Procedur whose name and address are: COI 300 12T	ates agency, or an offi re on the plaintiff an ar			
If you fail to respond, judge You also must file your answer or i		e entered against you for the relief demanded in the complaint.		
		DOUGLAS C. PALMER CLERK OF COURT		
Date:				
		Signature of Clerk or Deputy Clerk		

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

was rec	This summons for (neeived by me on (date)	ame of individual and title, if an	· · · · · · · · · · · · · · · · · · ·		
	☐ I personally serve	ed the summons on the ind			
			on (date)	; or	
	☐ I left the summon	as at the individual's reside	ence or usual place of abode with (name)		
		,	a person of suitable age and discretion v	who resides the	ere,
	on (date)	, and mailed a	copy to the individual's last known addre	ess; or	
	☐ I served the summ	nons on (name of individual)			, who is
	designated by law to	o accept service of process	on behalf of (name of organization)		_
			on (date)	; or	
	☐ I returned the sun	nmons unexecuted because			; or
	☐ Other (specify):				
	My fees are \$	for travel and \$	for services, for a tota	nl of \$().00 .
	I declare under pena	lty of perjury that this info	rmation is true.		
Date:					
			Server's signature		
		_	Printed name and title	,	
		_	Server's address		

Additional information regarding attempted service, etc:

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil de	ocket sneet. (SEE INSTRUC	TIONS ON NEXT PAGE OF TI	HIS FOR	·					
I. (a) PLAINTIFFS				DEFENDANTS					
KRISTIN REGAN, on behalf of herself and all others similarly s			ated	CAPITAL MANAGEMENT SERVICES, LP					
(b) County of Residence of	of First Listed Plaintiff	KINGS		County of Residence of First Listed Defendant					
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(c) Attorneys (Firm Name, A	Address, and Telephone Numbe	r)		Attorneys (If Known)					
COHEN & MIZRA NY 11201, (929) 575-417	AHI LLP, 300 Cadman 5	Plz W, 12 Fl., Brookly	yn,						
II. BASIS OF JURISDI	ICTION (Place an "X" in O	ne Box Only)		TIZENSHIP OF P	RINCIPA	L PARTIES			
☐ 1 U.S. Government			(1	For Diversity Cases Only) P I	TF DEF		and One Box fo	or Defenda PTF	ant) DEF
Plaintiff	(U.S. Government i	Not a Party)	Citizen	n of This State	1 🗇 1	Incorporated or Pri of Business In T		□ 4	□ 4
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizensh.)	ip of Parties in Item III)	Citizen	n of Another State	2 🗖 2	Incorporated and P of Business In A		□ 5	□ 5
-				n or Subject of a eign Country		Foreign Nation		□ 6	□ 6
IV. NATURE OF SUIT		orts	FOI	RFEITURE/PENALTY		here for: Nature of NKRUPTCY		escription STATUT:	
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☐ 120 Marine ☐ 130 Miller Act	☐ 310 Airplane ☐ 315 Airplane Product	☐ 365 Personal Injury - Product Liability	□ 690	of Property 21 USC 881	□ 423 With	drawal ISC 157	□ 376 Qui Tan 3729(a)		
☐ 140 Negotiable Instrument	Liability	☐ 367 Health Care/	L 090	Other			☐ 400 State Re	apportion	ment
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 320 Assault, Libel & Slander	Pharmaceutical Personal Injury			PROPEI ☐ 820 Copy	rights	☐ 410 Antitrus ☐ 430 Banks a		ıg
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	Other 448 Education	☐ 550 Civil Rights ☐ 555 Prison Condition		Actions					
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		Confinement							
V. ORIGIN (Place an "X" is	n One Box Only)								
		Remanded from 4 Appellate Court	Reinst Reope		erred from er District	☐ 6 Multidistr Litigation Transfer	-	Multidis Litigatio Direct Fi	on -
	15 USC 1692	tute under which you are fi	iling (Da	o not cite jurisdictional stat	tutes unless di	versity):			
VI. CAUSE OF ACTION	Brief description of ca Defendant violate								
VII. REQUESTED IN COMPLAINT:		IS A CLASS ACTION	DE	CMAND \$		CHECK YES only URY DEMAND:		complain	
VIII. RELATED CASI							/ \		
IF ANY	(See instructions):	JUDGE			DOCKE	ET NUMBER			
DATE 3/6/2018		SIGNATURE OF ATTOR		F RECORD					
FOR OFFICE USE ONLY		/s/ DANIEL COHEN	ı						
RECEIPT # AM	MOUNT	APPLYING IFP		JUDGE		MAG. JUD	GE		

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a

certificativ	on to the contrary is med.
/	IEL COHEN, counsel for PLAINTIFF, do hereby certify that the above captioned civil action ble for compulsory arbitration for the following reason(s):
F	monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
	the complaint seeks injunctive relief,
Ī	the matter is otherwise ineligible for the following reason. Question of law rather than question of fact predominates
	DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1
NONE	Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:
	RELATED CASE STATEMENT (Section VIII on the Front of this Form)
to another substantia deemed "r "Presumpt	t all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a all saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that tively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still efore the court."
	NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)
1.)	Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?
2.)	If you answered "no" above: a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
	b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
	c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: Kings County
Suffolk (County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or County? Yes No
Curron	(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).
	BAR ADMISSION
	I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
	✓ Yes □ No
	Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
	Yes (If yes, please explain No
	I certify the accuracy of all information provided above.
	Signature:/s/_ DANIEL COHEN

698 1/2 SOUTH OGDEN STREET BUFFALO, NY 14206-2317

Reference# 103684559

CAPITAL MANAGEMENT SERVICES, LP

Office Hours: M-F 8 am - 9 pm ET

Sat 8 am - 1 pm ET

Toll Free: 1-866-507-8122, Fax: 716-512-6046

698 1/2 South Ogden Street Buffalo, NY 14206-2317

Original Creditor: DISCOVER BANK Current Creditor: DISCOVER BANK Account #: XXXXXXXXXXXXX7564

Amount Due at Charge-Off: \$1885.02 Interest Accrued Since Charge-Off: \$0.00

Non-Interest Charges or

Description: Discover Card

Fees Accrued Since Charge-Off: \$0.00 Payments Made Since Charge-Off: \$0.05 Current Amount Due: \$1884.97

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T12 P1*****AUTO**MIXED AADC 140

Kristin Monique Regan 1777 PARK PL APT 1A BROOKLYN, NY 11233-5095

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT TO ADDRESS LISTED BELOW

Dear Kristin Monique Regan:

September 06, 2017

This company has been engaged by DISCOVER BANK to resolve your delinquent debt of \$1884.97.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different than the current creditor.

You may contact Capital Management Services, LP. at P.O. Box 964, Buffalo, NY 14220-0120 or call 1-866-507-8122 Mon. through Fri. 8 am to 9 pm ET, Sat. 8 am to 1 pm ET. Please submit your payment and make your check or money order payable to Discover to the address below. Payments and correspondence should be mailed to: Capital Management Services, LP, P.O. Box 964, Buffalo, NY 14220-0120. Overnight deliveries should be addressed to: Capital Management Services, LP., 698 1/2 South Ogden Street, Buffalo, NY 14206-2317. You may also make payments online at: www.cms-trans.com.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

ADDITIONAL INFORMATION FOR NEW YORK CITY RESIDENTS

This collection agency is licensed by the New York City Department of Consumer Affairs, License No. 1242722. Please contact Ronnie Learman at 1-866-900-9732 with any questions or concerns.

Please see additional page(s) for information regarding New York State Residents.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Capital Management Services Facing Class Action Over 'Current Balance' Questions</u>